

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

2010 MSPB 6

Docket Nos. AT-0752-06-0166-C-1
AT-0752-06-0167-C-1

William J. Parks,

Appellant,

v.

United States Postal Service,

Agency.

January 11, 2010

Dean Albrecht, Clearwater, Florida, for the appellant.

Jennifer C. Kellett, Esquire, Memphis, Tennessee, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

OPINION AND ORDER

¶1 The appellant petitions for review of the initial decision, issued July 30, 2009, that dismissed his petition for enforcement as settled. For the reasons discussed below, we find that the petition does not meet the criteria for review set forth at [5 C.F.R. § 1201.115](#), and we, therefore, DENY it. We REOPEN this case on our own motion under [5 C.F.R. § 1201.118](#), however, AFFIRM the initial decision as MODIFIED by this Opinion and Order, and DISMISS the petition for enforcement as settled.

BACKGROUND

¶2 The appellant filed a petition for enforcement of the Board's Opinion and Order that concurred in the Equal Employment Opportunity Commission's determination that the agency engaged in disability discrimination against the appellant. *Parks v. U.S. Postal Service*, [110 M.S.P.R. 64](#) (2008); MSPB Docket No. AT-0752-06-0166-C-1 (0166) Compliance Appeal File, Tab 1; MSPB Docket No. AT-0752-06-0167-C-1 (0167) Compliance Appeal File, Tab 1. Essentially, the appellant disputed the agency's calculation of the proper amount of back pay due. 0166 Compliance Appeal File, Tabs 1, 7, 8; 0167 Compliance Appeal File, Tab 1.

¶3 The administrative judge ordered the parties to discuss the dispute and attempt to resolve it without further litigation. 0166 Compliance Appeal File, Tab 8. The administrative judge subsequently issued an order stating that the agency had indicated that the parties had orally settled the petition for enforcement but sought time to reduce that settlement to writing, and that the appellant had then decided to "renege" on the oral settlement. 0166 Compliance Appeal File, Tab 9. The administrative judge then ordered the appellant to show why the appeal should not be dismissed as settled based upon an oral settlement. *Id.*

¶4 In response, the appellant asserted that scheduling conflicts limited his representative to telephonic participation in the settlement conference, and that side effects from the appellant's diabetes hampered his ability to fully understand the settlement discussions. 0166 Compliance Appeal File, Tab 10 at 4-5 of 45. The appellant claimed that he did not realize that he was confused about the number of overtime hours at issue in the back pay dispute until he read the written version of the settlement the following day, and that he believed that the settlement provided for 60 hours of overtime for each year at issue, rather than the total of 60 hours of overtime included in the written settlement. *Id.* at 4-5, 43 of 45.

¶5 The agency asserted that the administrative judge should dismiss the petition for enforcement based upon a valid oral settlement. 0166 Compliance Appeal File, Tab 13. The agency argued that both the appellant and his representative understood the negotiations, and clearly stated that the appellant was willing to settle the compliance dispute if the agency paid him for 60 hours of overtime. *Id.* at 1-2. To support this claim, the agency provided several affidavits from its participants in the negotiations. *Id.*, Exhibits 2-4. These affiants stated that the appellant did not exhibit any confusion during the negotiations, and that the parties reached a valid oral settlement. *Id.* The agency also submitted the unsigned written settlement. 0166 Compliance Appeal File, Tab 13, Exhibit 1. The written settlement was consistent with the agency's description of the settlement and also provided that the parties intended for the agreement to be filed with the Board, that the Board would retain jurisdiction for enforcement purposes, and that a party could seek enforcement only through the Board. *Id.* at 3, 5.

¶6 The administrative judge then dismissed the appellant's petition for enforcement, finding as follows: (1) The agency's affidavits indicated that the parties orally agreed to settle the petition for enforcement and that the agency agreed to reduce that agreement to writing; (2) the appellant's response to the show-cause order did not deny that the parties reached an oral settlement; (3) the record did not support the appellant's claim that he was confused about the settlement's terms or that his medical condition otherwise impaired his ability to negotiate and agree to the settlement; (4) an oral agreement may be valid and binding even where an appellant later declines to sign a written memorial of the terms of the oral agreement; (5) the record, therefore, showed that the parties entered into a valid oral settlement, and the terms of that oral agreement were reflected in the unsigned written agreement; (6) the agreement required the appellant to withdraw his petition for enforcement; and (7) if the parties wanted to reduce their oral agreement into writing and have that agreement enforced by

the Board, they may seek to vacate the initial decision dismissing the petition for enforcement before the initial decision becomes final, and that absent such action, the oral settlement would not be entered into the record and could not be enforced by the Board. 0166 Compliance Appeal File, Tab 14.

¶7 In his petition for review, the appellant reiterates his claims that his diabetes caused him to misunderstand the amount of overtime hours at issue in the settlement until he later reviewed the written agreement, and that his representative's telephonic participation during the settlement negotiations was limited due to telephone problems. Petition for Review File, Tab 1. The appellant has also submitted a brief statement from his physician stating that the appellant is not able to understand verbal or written language when his blood sugar levels are either too high or too low. *Id.*

ANALYSIS

¶8 The appellant's petition fails to provide a basis for granting review. Essentially, the appellant has argued both below and on review that his medical condition prevented him from having the mental capacity necessary to enter into a valid settlement agreement. A party challenging the validity of a settlement agreement, however, bears a heavy burden of showing a basis for invalidating it. *Potter v. Department of Veterans Affairs*, [111 M.S.P.R. 374](#), ¶ 5 (2009). Further, a party to a settlement agreement is presumed to have full legal capacity to contract unless he is mentally disabled, and the mental disability is so severe that he cannot form the necessary intent. *Id.*, ¶ 6.

¶9 Here, the appellant has not met his heavy burden of invalidating the oral settlement based upon his inability to form the necessary intent because of his diabetes. As the administrative judge found, the agency submitted affidavits from its officials who participated in the settlement negotiations, and all of them stated that the appellant did not exhibit any confusion during the negotiations, that he was able to follow the discussion and argue his points cogently, and that

the appellant, in fact, offered the term that he later claimed caused confusion. 0166 Compliance Appeal File, Tab 13, Exhibits 2-4; Tab 14 at 3-4. The administrative judge, therefore, appropriately concluded that this evidence outweighed the appellant's unsupported claim that his mental state precluded him from entering into a valid settlement. 0166 Compliance Appeal File, Tab 14 at 3-4.

¶10 The appellant's petition does not provide a basis for disturbing this conclusion. Neither his allegation of his representative's telephone problem nor his reiteration of his mental state outweighs the sworn statements of the agency witnesses present during the negotiations. Petition for Review File, Tab 1. While the appellant has now submitted for the first time a medical statement indicating that he is unable to comprehend verbal or written language when his blood sugar is too high or too low, the appellant has not explained why he could not have presented this evidence before the record closed below, and the Board need not consider it now. *Id.*; see *Avansino v. U.S. Postal Service*, [3 M.S.P.R. 211](#), 214 (1980). In any event, this evidence does not establish that the appellant, in fact, suffered from fluctuations in his blood sugar during the settlement negotiations. Petition for Review File, Tab 1.

¶11 We also note that the administrative judge erred by dismissing the appeal based upon an oral settlement without first documenting whether the parties intended it to be entered into the record for enforcement purposes. Oral settlements are enforceable, and administrative judges should ensure that the terms of enforceable oral agreements are memorialized in the record. *Brown v. Department of the Navy*, [60 M.S.P.R. 461](#), 462-63 (1994). Further, the Board has repeatedly held that it is error for an administrative judge to dismiss an appeal based on a settlement agreement without documenting for the record whether the parties reached a settlement agreement, whether they understood the agreement's terms, and whether they agreed that the settlement agreement is to be enforceable by the Board. See, e.g., *Gerdts v. Department of Labor*, [111 M.S.P.R. 412](#), ¶ 14

(2009); *Hester v. U.S. Postal Service*, [72 M.S.P.R. 149](#), 151 (1996); *Jimenez v. Department of Health & Human Services*, [70 M.S.P.R. 24](#), 26 (1996).

¶12 Here, the administrative judge determined that the parties reached a valid oral settlement and that the unsigned written agreement set forth the settlement's terms. 0166 Compliance Appeal File, Tab 14 at 5. The unsigned agreement clearly indicated that the parties intended for the agreement to be included in the Board's record for enforcement purposes. 0166 Compliance Appeal File, Tab 13, Exhibit 1 at 5. Despite this language, however, the administrative judge stated that, if the parties wanted to reduce their oral agreement into writing and have the agreement enforced by the Board, they may "seek to vacate this initial decision in order to do so" before the initial decision becomes final. 0166 Compliance Appeal File, Tab 14 at 5-6. Absent such action, the administrative judge stated that the oral settlement has not been entered into the record and cannot be enforced by the Board. *Id.* at 5.

¶13 By placing the onus on the parties to clarify their intentions regarding enforcement before the initial decision becomes final, the administrative judge improperly dismissed the appeal as settled without first documenting whether the parties agreed that the settlement would be enforceable by the Board, as required. *See Gerdts*, [111 M.S.P.R. 412](#), ¶ 14. Because the parties do not dispute that the unsigned written agreement reflects the terms of the oral settlement (the appellant has only asserted that he lacked the mental capacity to enter into the agreement), and that settlement specifically provides that the parties intended that the agreement be entered into the record for enforcement purposes, we now enter that agreement into the record and dismiss the appeal as settled. *See id.*, ¶¶ 15-18.

ORDER

¶14 This is the final decision of the Merit Systems Protection Board in this compliance matter. Title 5 of the Code of Federal Regulations, section 1201.113(c) ([5 C.F.R. § 1201.113\(c\)](#)).

NOTICE TO THE PARTIES OF THEIR ENFORCEMENT RIGHTS

If the agency or the appellant has not fully carried out the terms of the agreement, either party may ask the Board to enforce the settlement agreement by promptly filing a petition for enforcement with the office that issued the initial decision on this appeal. The petition should contain specific reasons why the petitioning party believes that the terms of the settlement agreement have not been fully carried out, and should include the dates and results of any communications between the parties. [5 C.F.R. § 1201.182](#)(a).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 ([5 U.S.C. § 7703](#)). You may read this law, as well as review the Board's regulations and other related material, at

our website, <http://www.mspb.gov>. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board
Washington, D.C.